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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,084	04/16/2004	Yasuhito Miyata	79873	9251

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EXAMINER

CULBRETH, ERIC D

ART UNIT PAPER NUMBER

3616

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,084	Applicant(s) MIYATA, YASUHIITO	
	Examiner Eric Culbreth	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 8/21/06. These drawings are not approved.
 - a. Figure 10 should be described, say, in its brief description, as a “schematic” drawing (“schematic” indicates that the drawing is for illustration only and does not specify size, location, specific types of folds, etc.; currently the figure is new matter because there is no support in the original specification for the specific folds shown, the size of the portion outside the retainer, etc.).
 - b. Also, the retainer illustrated in Figure 10 is not clearly able to hold the entire airbag.
2. The drawings are objected to because regarding Figure 8, it is not clear why the outer peripheries of the airbag intersect or cross over at the lower left corner of the bag in the figure (the proposed drawing change to Figure 8 on 8/21/06 actually obviated this objection, but because the replacement sheets were not approved, the objection remains; if the same change to Figure 8 were resubmitted with an amended Figure 10 showing the retainer large enough to hold the entire bag, and with the specification stipulating that Figure 10 is a “schematic” showing, the replacement sheets would most likely be approved). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The

figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the air bag portions folded differently from each other (claim 3) and the retainer sized to store the entire airbag (claim 16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Because the proposed replacement sheets were not approved, the objections to the specification remain.

Claim Rejections - 35 USC § 112

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, lines 3-4 there is no clear antecedent basis for the air bag portion being mounted to the handlebar (in claim 8, lines 1-2, the air bag is recited as configured to be mounted to the handlebar, not the air bag portion).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. The terminal disclaimers filed 8/21/06 are not proper because on page 1, line 9 of each of the three terminal disclaimers after "to" (second occurrence) should be inserted --any patent granted on--. (Note: The appropriate form from the MPEP Section 1490 may be submitted in lieu of the suggested corrections.)

7. Claims 1-17 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/826,014. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims eventually cover an airbag on handlebars with a cover and wrap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-17 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22

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of copending Application No. 10/813,523. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims eventually cover an airbag on handlebars with a cover and wrap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-17 as best understood are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/800,263. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims eventually cover an airbag on handlebars with a cover and wrap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-3, 5-6, 8-13, 15 and 17 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Kuroe et al US006846009B2, of record.

Kuroe et al discloses an airbag device 120 for a motorbike (Figures 3 and 7) comprising air bag 20, 122 configured for being deployed and inflated in the event of a frontal collision, holder/retainer 23 or 124 as broadly recited for the airbag, and a portion of the bag above rivets 23 or in mounting device 124 adapted and configured for being mounted to the motorbike by cover 22 or 121 outside the holder to minimize interference as functionally recited in claim 1. In Figure 7, the airbag includes a portion outside holder 124 and another portion contained inside holder 124 minimized in size as functionally recited inasmuch as applicant's, and holder 124 that would be inflated prior to the portion mounted outside the holder (i.e., gas would enter the portion in holder 124 first) (claims 2, 9 and 17). The portion of the bag inside the holder 124 in Figure 7 is folded differently from the portion of the bag outside the holder (i.e., the folds are smaller on the portion in holder 124 (claim 3)), and the air bag portion has an elongate configuration in Figure 2, with a cover 22 or 121 separate and spaced from the holder 124 (claims 5-6 and 13). Also as seen in Figure 2, the airbag is configured for being mounted to a handlebar of a motorbike, with the cover matching the handlebar generally as broadly recited in claims 8, 12 and 15. The air bag is combined with a motorbike (claim 10), with the bag being deployed in front of seat 12 in Figure 2 (claim 11).

Because this art is being applied as a rejection for the first time, this action will be non-final.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroe et al in view of Seifert (US Patent 6099028, of record).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kuroe et al, who already teaches a cover 121 with a frangible portion 121d, to include a protective cloth as taught by Seifert in order to protect the bag and keep it folded properly until deployment.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Eric Culbreth
Primary Examiner
Art Unit 3616

ec

Not
approved
EC
10/19/06

5/6

FIG. 8

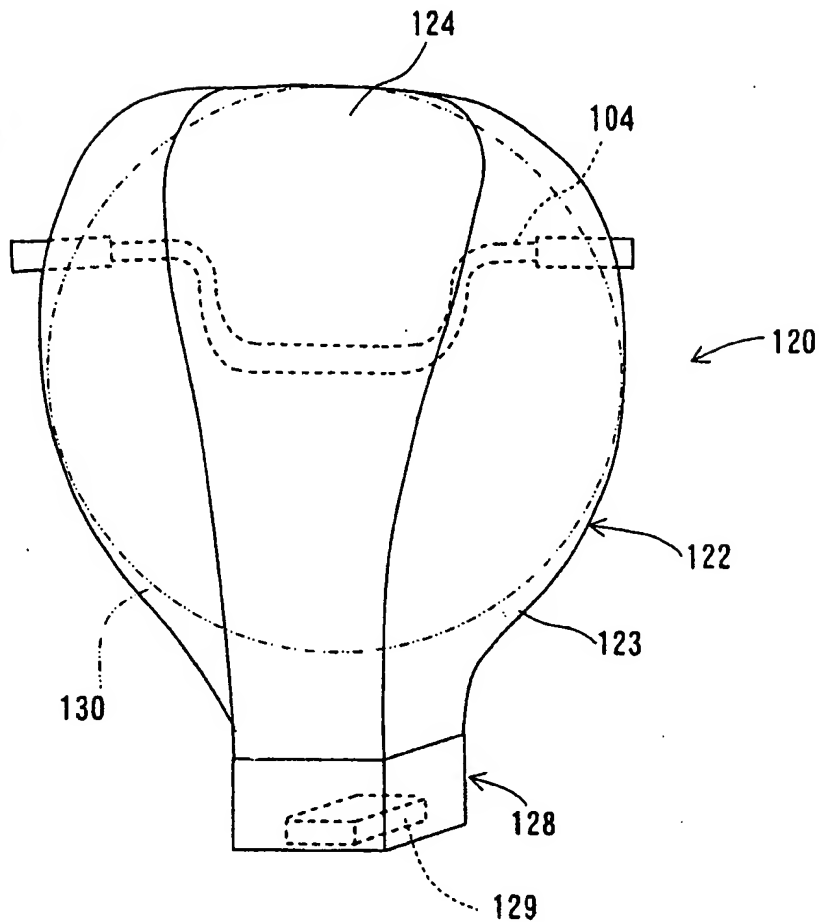


FIG. 9

